In the Supreme Court of the United States

OCTOBER TERM, 1937

No. 287

EDWARD McLOUGHLIN, PETITIONER

v.

GUY T. HELVERING, COMMISSIONER OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

MEMORANDUM FOR THE RESPONDENT

We do not oppose the granting of a writ of certiorari in this case.

The question presented is whether the petitioner's compensation as counsel for the Liquidation Bureau of the New York State Insurance Department is subject to Federal income tax. The decision in the instant case is in conflict with the decision of the Circuit Court of Appeals for the Fifth Circuit in *Therrell* v. *Commissioner,* 88 F. (2d) 869, where it was held that the compensation of a liquidator of certain Florida State banks, paid entirely out of funds of the banks, was immune from

Federal taxation. The court below recognized that its decision was in conflict with the decision in the *Therrell* case, saying (89 F. (2d) 699, 702–703):

> Any distinction between the Therrell decision and the case at bar is tenuous but, with all respect, we feel obliged to differ with the decision of the majority.

In the *Therell* case a petition for certiorari on behalf of the Commissioner of Internal Revenue is now pending, No. 128, 1937 Term, wherein it is asserted that the decision in that case is in direct conflict with the decision in the instant case.

The respondent believes that the decision of the Circuit Court of Appeals in the instant case is correct. In view, however, of the conflict of decisions, as well as the importance of the question, which has not been passed on by this Court, the respondent does not oppose the issuance of a writ of certiorari.

Respectfully submitted.

STANLEY REED,
Solicitor General.

AUGUST 1937.

U. S. GOVERNMENT PRINTING OFFICE: 1937